FILE COPY

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

No. 534

ESTATE OF HENRY W. PUTNAM; GUARANTY TRUST COMPANY OF NEW YORK, Executor,

Petitioner,

against

COMMISSIONER OF INTERNAL REVENUE,

Respondent.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

WM. DWIGHT WHITNEY,
Counsel for Guaranty Trust Company of New York, as Executor of the Last Will and Testament of Henry W. Putnam, deceased,
15 Broad Street,
New York, N. Y.

ROBERT T. SWAINE,
ROSWELL MAGILL,
GEORGE G. TYLER,
Of Counsel.

January 6, 1945.

SUBJECT INDEX

CASES CITED

STATUTES CITED

OTHER AUTHORITIES

IN THE

Supreme Court of the United States

OCTOBER TERM, 1944

ESTATE OF HENRY W. PUTNAM; GUARANTY TRUST COMPANY OF NEW YORK, Executor, *Petitioner*, *against* COMMISSIONER OF INTERNAL REVENUE, *Respondent*.	No. 534

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR PETITIONER

Opinions Below

The opinion of the United States Board of Tax Appeals (now The Tax Court of the United States) is reported at 45 B. T. A. 517 (R. 20-25). The opinions of the Circuit Court of Appeals (majority opinion by Judge Thomas W. Swan, R. 40, dissenting opinion by Judge Learned Hand, R. 44) are reported at 144 F. (2d) 756.

Jurisdiction

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925 (43 Stat. 938, 28 U. S. C., § 347(a)).

The order, judgment and decree of the Circuit Court of Appeals for the Second Circuit was entered on August 25, 1944 (R. 46). Petition for certiorari was filed on October 2, 1944, and granted on November 13, 1944 (R. 47).

Question Presented

Under the Revenue Act of 1938, should a corporate dividend upon shares owned by a decedent, which was declared payable to holders of record on a date subsequent to his death, be treated as (1) income accrued to him during his lifetime, or (2) income accrued to the shareholder who became on the record date entitled to receive it or on the payment date received it?

The Statute

The case is controlled by the Revenue Act of 1938 (52 Stat. 447), the pertinent provisions of which are the familiar definition of gross income in § 22(a), which includes "dividends", and the following:

> "Sec. 115. Distributions by Corporations.
>
> "(a) Definition of dividend.—The term 'dividend' when used in this title (except in section 203(a)(3) and section 207(c)(1), relating to insurance companies) means any distribution made by a corporation to its shareholders, whether in money or in other property, (1) out of its earnings or profits accumulated after February 28, 1913, or (2) out of the earnings or profits of the taxable year (computed as of the close of the taxable year without diminution by reason of any distributions made during the taxable year), without regard to the amount of the earnings and profits at the time the distribution was made."

"SEC. 42. PERIOD IN WHICH ITEMS OF GROSS INCOME INCLUDED.

"The amount of all items of gross income shall be included in the gross income for the taxable year in which received by the taxpayer, unless, under methods of accounting permitted under section 41, any such amounts are to be properly accounted for as of a different period. In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period."

Statement

Henry W. Putnam died on March 30, 1938, owning, among other investments, shares in

General Motors Corporation* and United Profit Sharing Corporation,* both Delaware corporations;

American Can Company, American Smelting & Refining Company and Hecker Products Corporation, all New Jersey corporations;

Westinghouse Air-Brake Manufacturing Company and Philadelphia Company, both Pennsylvania corporations; and

United States Smelting, Refining & Mining Company,* a Maine corporation (R. 22-23).

All of these corporations had made dividend declarations prior to the date of his death. In every case, however, the dividend was to be paid only to holders of record on

---

*Preferred stock.

designated dates, all of which dates were subsequent to the date of his death (in one case, six months later). In every case also the payment date was to be subsequent to the record date, in most cases one month subsequent to the record date (R. 22-23).

On the date of death, therefore, there had not yet accrued to the decedent any right to receive any of the dividends.

The Commissioner assessed income tax on the dividends both to the decedent (R. 16) and to his Estate (R. 8), so as to insure collection of income tax either as of the date of declaration or as of the record date or payment date. The Executor recognized the obligation of the Estate to pay the tax, as the Estate still held the shares in question on the record and payment dates. It disputed, however, the power of the Commissioner to impute the same income to the decedent during his lifetime.

The Commissioner's doubt was evidently whether under § 42 of the Revenue Act of 1938, 52 Stat. 447, the dividend had accrued to the decedent, the relevant provision being that

> "* * * In the case of the death of a taxpayer there shall be included in computing net income for the taxable period in which falls the date of his death, amounts accrued up to the date of his death if not otherwise properly includible in respect of such period or a prior period."

The taxpayer's position was that income could not be said to have accrued prior to death, for the dividends had not been declared payable to the decedent, but only to such stockholders as should be on the books on a subsequent date. A dividend declared payable to holders on a subsequent record date confers no rights upon present holders, and hence

could not constitute income to such holders under Section 22(a) of said Revenue Act.

The Tax Court,[1] considering itself bound by the 4th Circuit Court of Appeals' decision in *Helvering* v. *McGlue's Estate,* 119 F. (2d) 167 to apply the law of the State of incorporation as to the date upon which a dividend became "a debt", upheld the assessment to the decedent in the cases of the New Jersey corporations and the assessment to the Estate in the cases of the Delaware, Pennsylvania, and Maine corporations.[2]

The decedent's income for the portion of the year 1938 prior to the death was in higher brackets than the Estate's income for the balance of the year,[3] and accordingly there followed cross-appeals to the 2d Circuit Court of Appeals.

The majority of the 2d Circuit Court of Appeals (Swan and Chase, JJ.) held (1) that the case called for the application of a uniform Federal rule, and (2) that the rule should be that a dividend accrues for the purposes of §42 as soon as declared. The Tax Court's decisions as to the tax liability of the decedent and the Estate were reversed and remanded "with directions to accrue the dividends to the decedent and determine the decedent's deficiency and the estate's overpayment accordingly" (R. 46).

---

[1]The case was heard and decided while the Tax Court was still known as the Board of Tax Appeals.

[2]In its own decision in *McGlue's Estate,* 41 B.T.A. 1186, the Tax Court had evidently assumed that the question of the date of accrual for income tax purpose of a corporate dividend called for a uniform Federal rule. In this it was reversed by the 4th Circuit Court of Appeals,—erroneously (as both the majority and dissenting Judges of the Court below, and both the Commissioner and we ourselves, all agree; *cf. Lyeth* v. *Hoey,* 305 U. S. 188).

[3]This was because the Estate distributed substantially all of its income, which thus became taxable to the various distributees.

Judge Learned Hand dissented. He agreed that the case called for the application of a uniform Federal rule, but he pointed out that no date prior to the record date could be determinative, for at the date of death it was still undetermined whether the decedent would have received income at all.

Specification of Errors to be Urged

The Circuit Court of Appeals erred:

1. In failing to hold that there was an overpayment of $13,576.95 in the decedent's income tax for the taxable period ending March 30, 1938, the date of his death.

2. In holding that the corporate dividends accrued to the decedent on the dates such dividends were declared and thus prior to his death.

Summary of Argument

§ 115 of the Revenue Law and Art. 115 of the Regulations prescribe the date of receipt as determinative of income from a corporate dividend. *Tar Products Corporation* v. *Commissioner,* 3rd Circ., 130 F. (2d) 866, has applied that rule to a taxpayer on the accrual basis. And under § 42 of the Revenue Act of 1938, applicable in this case, the accrual date is to govern. At least, the accrual date cannot be earlier than the record date. Stock Exchange and general financial practice indicate that this is the true rule. The theory of such decisions as there have been in this Court is consistent therewith. And it is the reasonable result of a fair interpretation of the statute on its face.

ARGUMENT

I.

The Court below erred in holding that a dividend accrues on the declaration date.

(1) A dividend cannot accrue to a person until the right to receive it has accrued to him.

Both the majority and dissenting judges of the Court below, and both the Commissioner and the taxpayer in the Court below, agreed that the question (as to the date when a dividend accrues) calls for the application of a uniform Federal rule, and not a consideration of the local law of the State in which the corporation declaring the dividend is incorporated.[4] The Court, however, erred in determining what that uniform Federal rule was. The majority opinion is to the effect that a dividend accrues on the declaration date.

What we argued below, and what Judge Learned Hand has pointed out in his dissenting opinion, is that under the modern record date practice there is no stockholder who can make a claim to be entitled to a dividend upon the ground that he held the stock on the mere date of declaration. Judge Learned Hand said:

---

[4]As showing the confusion in which this question has been shrouded, reference is made to *Helvering* v. *McGlue's Estate*, 119 F. (2d) 167 (C. C. A. 4); *Commissioner* v. *Cohen*, 121 F. (2d) 348 (C. C. A. 5); and the decision of the Tax Court in the instant case, all holding that local law governs. For a more detailed history of this confusion, the Court is respectfully referred to our brief in support of petition for certiorari, at pp. 8-9 and 15-17.

> "The confusion lies in the fact of treating the certainty that there is a debt as a certainty of the identity of the creditor."

Each one of the eight corporations in this case had declared a dividend and would owe a debt; but prior to the record date it was not known to whom the debt would be due and payable,—who would realize income from it,—to whom such income would accrue.

Judge Learned Hand further pointed out the distinction between the question in the present case and the question in *Helvering* v. *Enright,* 312 U. S. 636:

> "* * * it is one thing to hold that one should compute the present value of all the items of unfinished work on a lawyer's books, even though there is a chance of error in doing so because some of the charges are contingent; they have a present value, which ordinarily can be approximately computed. But it is quite another thing, when the very obligee of a claim remains undetermined, arbitrarily to select one of the two or more possible persons who may become the obligee, and say that one will treat him as the owner of the claim."

It seems entirely reasonable that a dividend should be held not to accrue to a person until the right to receive that dividend has accrued to him. As this Court said, in *Spring City Foundry Co.* v. *Commissioner,* 292 U. S. 182, 184:

> "Keeping accounts and making returns on the accrual basis, as distinguished from the cash basis, import that it is the *right to receive* and not the actual receipt that determines the inclusion of the amount in gross income. When the right to receive an amount becomes fixed, the right accrues. * * *" [Emphasis ours.]

(2) The statute and regulation which define a "dividend" are to the effect that a distribution is made only when it becomes subject to the recipient's demand.

Section 115(a) of the Revenue Act of 1938 defines a "dividend" as "any distribution made by a corporation to its shareholders" out of its earnings or profits. This must mean that there can be no "dividend" until a *distribution* has been *made* "by a corporation to its shareholders". The statutory provision is accordingly irreconcilable with the holding below that a dividend can be income on the declaration date.

A Treasury Regulation of long standing (with respect to the Revenue Act of 1938 contained in Article 115-1 of Treasury Regulations 101) further provides:

> "A taxable distribution made by a corporation to its shareholders shall be included in the gross income of the distributees when the cash or other property is unqualifiedly made subject to their demands."

The statute, § 115(a), and the regulation, Art. 115-1, were construed in *Avery* v. *Commissioner,* 292 U. S. 210, to mean the date of actual receipt of the dividend by the taxpayer; and that construction was applied by the 3rd Circuit to taxpayers on an accrual basis in *Tar Products Corp.* v. *Commissioner,* 130 F. (2d) 866. The Commissioner did not apply for a writ of certiorari in the *Tar Products* case.

As is pointed out in Judge Goodrich's opinion in the *Tar Products* case, there are good reasons why the treatment of dividends as income should be subject to a single

rule, regardless of the bookkeeping methods of the taxpayers,[5] *e.g.* (1) the single rule enables taxpayers' returns to be checked against the corporation's record of disbursement; (2) the single rule prevents variations in the case of dividends paid in kind where the value of the property fluctuates.

A third good reason for a uniform rule might be that a "dividend", in order to be a taxable dividend rather than a return of capital, must be paid out of the earnings or profits of the corporation, § 115(a), and that the date for determining the amount of earnings or profits available to pay a dividend is uniformly the date of payment, rather than the date of declaration. See *Mason* v. *Routzahn,* 275 U. S. 175; *Commissioner* v. *James,* 49 F. (2d) 707 (C. C. A. 2d 1931); Paul, "Selected Studies in Federal Taxation (Second Series)", p. 154. Thus, if we suppose a "dividend" that had been declared on December 15, 1938, payable on March 31, 1939, to stockholders of record February 28, 1939, and that the declaring corporation had no earnings in 1938[6] but did have in 1939 earnings sufficient to pay the dividend, then (1) if the rule be that it becomes a dividend for income tax puposes only at the date of pay-

[5]Whether there is a distinction between accrual and cash basis taxpayers, or whether both become liable only upon receipt of payment, need not, however, be finally decided in this case. The former may become liable upon the record or "ex-dividend" date, although the latter would not become liable until the receipt of payment. The day on which the stock sells "ex-dividend" on the Stock Exchange is customarily the day preceding the "record" date set by the directors.

[6]It is assumed that the corporation had no accumulation of earnings prior to 1938 but that it did have sufficient paid-in surplus out of which a dividend could legally be declared for purposes of the general corporate law.

ment (as we contend), then cash basis and accrual basis taxpayers will be treated alike and taxed upon the same amount; but (2) if the rule be as announced by the Court below, the "dividend" would be a return of capital for accrual basis taxpayers and a taxable dividend for cash basis taxpayers.

The Tax Court itself now follows the *Tar Products* case as a rule of accounting convenience. In *American Light and Traction Company,* 3 T. C. 1048, 1050 (1944), it stated:

> "* * * We have given careful consideration to the respondent's argument, our opinion and that of the Circuit Court of Appeals. We are convinced that the importance of the question lies in the promptness and certainty of the answer. Therefore, without discussing the relative merits of the opinion of the Circuit Court of Appeals and our own, we yield to the former. Moreover, the decision of the Third Circuit Court of Appeals in the *Tar Products* case has been cited with apparent approval by the Circuit Court of Appeals for the Fourth Circuit in *Helvering* v. *Kaufmann et al.,* 136 Fed. (2d) 356 * * *."

(3) The mere declaration of a dividend does not, either in theory or practice, affect the value of a stock.

(i) INTRODUCTORY

We submit these business considerations, not because the Courts exercise any fact-finding function in tax cases, but to aid the Court in determining what ought to be the uniform interpretation of the tax statute.

(ii) Theory

Before the dividend is declared, the stockholder is the owner of his *pro rata* share of the net worth of the corporation; after the dividend is declared, he owns no more and no less, the only difference being that the directors have decided that a portion of the assets shall be set apart and distributed to the stockholders at a later date (the payment date). The only effect the declaration could have would be the psychological one on prices if the dividend were unexpected and called the attention of the market to the favorable earnings or position of the company. That such an effect is at least rare, and should not therefore be the basis of a rule in our modern industrial civilization, is indicated by the experience of the dividends involved in the instant case.

(iii) Practice

Taking merely as examples two of the major stocks in this case, in both of which there is widespread trading,—one a common stock (Westinghouse Air Brake), the other a preferred stock (General Motors),—we find that the dividend declarations involved in the present case resulted in no change in value. The examples are given in Appendix B. We have checked the other dividend declarations involved in the present case, and found similar results.

However, the situation is quite different on the record date. The universal rule of stock exchanges is that sales before the record date include the dividend and that sales after the record date do not. On the day before the record date, to allow purchasers time to obtain delivery and make the transfer on the books of the corporation, the stock sells

ex-dividend. On this date, other factors being equal, the price of a stock will drop from the price of the previous day by the exact amount of the dividend. The following quotations are uniform in describing the lessons of daily financial experience:

Dice & Eiteman, The Stock Market (1941):

> "On the day on which a stock is sold ex-dividend the opening, if nothing of importance has happened since the previous day's close, will be lower than the previous close by the amount of the dividend * * *" (p. 48).

Preinreich, Gabreal A. D., The Nature of Dividends (1935):

> "* * * the opening price of a stock on the ex-dividend date, in normal times, is equal to the last closing price minus the dividend which is no longer included" (p. 47).

Schabacker, Stock Market Theory and Practice (1930):

> "For on this ex-dividend date for any stock, the market price of that issue theoretically drops the amount of its dividend. If the stock closed at 110 the day before it goes ex-dividend, and the amount of the dividend to be paid is $10, then theoretically the opening price the next morning, on the ex-dividend date, would be only 100. * * * In practice, of course, the decline is not always exactly the amount of the dividend, depending upon the ordinary action of supply and demand for the stock in question. But such stock would almost certainly drop approximately the amount of the dividend which it went 'ex' (p. 353).

* * * * * *

"The market price of a stock on which rights to subscribe have been declared drops theoretically, and usually in a practical manner, just the value of the right declared, on the date when the stock goes 'ex-rights,' just as we have seen that a stock drops the value of its cash dividend, or its stock dividend, on the day when the stock goes 'ex-dividend' " (p. 368).

Armstrong, The Book of the Stock Exchange (1934):

"On the day that a security is quoted 'ex'-dividend, the approximate value of the dividend is deducted from the market price. The specific date of such deduction has the immediate effect of settling to whom the dividend belongs" (p. 270).

Grange, Corporation Law for Officers and Directors (1935):

"On that day [ex-dividend day] the stock is said to become 'ex-dividend' and there is usually a small drop in its market price to compensate for the loss of the dividend which has been cut off, so to speak, from the stock" (pp. 262-3).

We suggest that this Court will find the following excerpt from Mr. Justice Pitney's opinion in *United States* v. *Phellis,* 257 U. S. 156-176,[7] to be still practical economic good sense and sound income tax law, *a fortiori* applicable to a successor to ownership of shares on which a dividend has been declared but for which the record and 'ex-dividend' dates have not yet occurred:

"Where, as in this case, the dividend constitutes a distribution of profits accumulated during an ex-

[7]Justices McReynolds and Van Devanter dissenting.

tended period and bears a large proportion to the par value of the stock, if an investor happened to buy stock shortly before the dividend, paying a price enhanced by an estimate of the capital plus the surplus of the company, and after distribution of the surplus, with corresponding reduction in the intrinsic and market value of the shares, he were called upon to pay a tax upon the dividend received, it might look in his case like a tax upon his capital. But it is only apparently so. In buying at a price that reflected the accumulated profits, he of course acquired as a part of the valuable rights purchased the prospect of a dividend from the accumulations—bought 'dividend on,' as the phrase goes—and necessarily took subject to the burden of the income tax proper to be assessed against him by reason of the dividend if and when made. He simply stepped into the shoes, in this as in other respects, of the stockholder whose shares he acquired, and presumably the prospect of a dividend influenced the price paid, and was discounted by the prospect of an income tax to be paid thereon. In short, the question whether a dividend made out of company profits constitutes income of the stockholder is not affected by antecedent transfers of the stock from hand to hand" (pp. 171-172).

II.

A dividend does not accrue differently to a decedent than to anyone else.

(1) The dividend case is not within the mischief aimed at by §42 of the Revenue Act of 1938.

Section 42 was designed to cure the avoidance of tax which resulted from decisions, of which *Nichols* v. *United*

States, 64 Ct. Cls. 241 provided an example, in which income accrued during the lifetime of a decedent who was on a cash basis was held not to be income either to him or to his estate.[8] This would be particularly applicable to earnings, as earnings necessarily represent the reward of labor by the decedent during his lifetime; *cf. Lucas* v. *Earl*, 281 U. S. 111. It would also be applicable to items accruing over regularly spaced periods of time, such as quarterly or annual taxes, rentals and the like; *Enright's* case, 312 U. S. at p. 643. It would *not* be applicable to dividends, whose declaration is entirely within the discretion of the Board of Directors governed by the exercise of the directors' judgment as to the condition of the corporation.

Accordingly, in this case, the Commissioner has done what Congress recognized that he could not do in the type of case for which § 42 was provided. He has assessed the Estate. He has himself thus ruled that the income did accrue from the dividend to the estate after the death. This assessment is not disputed by the Executor. Hence, the evil which § 42 was designed to correct does not exist in this case. The Commissioner has no occasion to resort to § 42 to collect the income tax which is properly due on the dividends.

None of the cases involving § 42, except the instant case, has indicated that a dividend accrues differently for a decedent than for anyone else. If there be any reason for such a ruling, it has yet to be stated.

---

[8]For the convenience of the Court, those portions of the Congressional reports dealing with §42 of the Revenue Act of 1934 (the same as §42 of the Revenue Act of 1938) are included as Appendix A to this brief.

(2) The dividend case is not within the rationale of *Helvering* v. *Enright*, 312 U. S. 636.

A paragraph of this Court's opinion in the *Enright* case, at pages 644-645, has been supposed by the Court below to justify it in not giving an independent analysis of the dividend question on the merits. The paragraph in question, 312 U. S. at 644-645, concluded:

> "Accruals here are to be construed in furtherance of the intent of Congress to cover into income the assets of decedents, *earned* during their life and unreported as income, which on a cash return, would appear in the estate returns. *Congress sought a fair reflection of income.*" (Italics ours.)

This Court further stated (at p. 642) that the question was whether the earnings in that case constituted "an accrual of income" and concluded that they were taxable *because* they were "properly" accrued. This constituted a decision, in conformity to the statute, that the question is in each type of case whether income has in fact *properly* "accrued".

The opinion further pointed out "That the meaning to be attributed to 'accrued' as used in § 42 is to be gathered from its surroundings" (at p. 644). The appropriate "surroundings" in the present case may be found in §115 of the Revenue Act of 1938; and §115 provides the definition, in terms applicable throughout the Act, of a "dividend" as a corporate distribution when "made". Thus, the question under §42 becomes: When was the dividend made to the taxpayer?

We understand that the true construction of this Court's position in the *Enright* case is to be found in its holding at

page 643 that (1) "accrued" had *not* become a "word of art" under the Income Tax Act, and therefore that (2) its meaning under §42 was open to objective interpretation in each case, unfettered by reference to broader interpretations under other sections, specifically (in that case) under § 48 of the Revenue Act of 1934. We understand that this Court was merely disclaiming any slavish adherence to the formula of statutory interpretation that a given word must always have the precisely same meaning whereever it appears in a statute, regardless of its context. We are further confident that this Court did not mean to be understood as saying that the desirability of raising revenue from decedents in itself creates a rule of interpretation, carrying as a consequence that income is to be imputed to decedents under § 42 which would not under other sections be income at all.

The critical question remains: When may a corporate dividend be held to have "*properly* accrued"? The learned Court below was in error in supposing that this Court intended in the *Enright* case to dispense with the duty of construing the governing word employed by Congress— "accrue".

This case is different in all vital respects from *Enright's* case:

(1) As to the factual basis of the cases: whereas earnings may fairly be said to have necessarily accrued during the lifetime of the individual who earned them, no such consideration applies to dividends until they become payable to the stockholder.

(2) As to the theory of statutory interpretation: whereas there was no other section of statute providing

material aid to the interpretation of the word "earnings", Section 115(a) does require to be considered where dividends are involved.

(3) As to the practical results: whereas a decision adverse to the Government in *Enright's* case would have meant that no income tax was payable, as it was understood that the earnings could not in any event be income to the Estate, there was in this case an assessment of the same income to the Estate itself.

The assessment to the Estate has added significance, in that it reflects the doubt of the Commissioner himself that the income had truly "accrued" before the death, even under a "broad" interpretation of the word.

The leading earlier case on the meaning of "accrue" was doubtless *United States* v. *Anderson,* 269 U. S. 422. This case was the first in this Court that recognized and applied the privilege, first provided in the 1916 Act, that taxpayers' accounts might be kept on an accrual basis. Argued by Mr. Solicitor General Mitchell for the Government and by Mr. John W. Davis for the taxpayer in 1925, the opinion was rendered by the present Chief Justice, with Mr. Justice Sutherland and Mr. Justice Sanford dissenting. The sole question was as to the meaning of "accrual"; and the opinion for this Court after reviewing the arguments of the distinguished counsel before it, concluded that "accrual" occurs when the liability of the taxpayer is *determined,* and all the events have occurred which fix the amount.

The *determination* of the taxpayer to whom the dividend is to be paid cannot be made until the record date. Until

that date, one does not know who the recipient is to be. Whatever be the correct theory as to the date upon which a tax accrues, it cannot be before the date when it is known who the taxpayer is to be.

Respectfully submitted,

WM. DWIGHT WHITNEY,
Counsel for Guaranty Trust Company of New York, as Executor of the Last Will and Testament of Henry W. Putnam, deceased,
15 Broad Street,
New York, N. Y.

ROBERT T. SWAINE,
ROSWELL MAGILL,
GEORGE G. TYLER,
Of Counsel.

January 6, 1945.

APPENDIX A

Excerpts from Congressional Committee Reports re Section 42 of the Revenue Act of 1934

"Sections 42 and 43 of the Revenue Act of 1932 define the period in which items of income and of deduction shall be included.

"Your subcommittee recommends adding to the first of these sections a provision requiring the income-tax return of a decedent to include amounts of income accrued up to the date of his death, regardless of the fact that he may have kept his books on the cash basis. In the case of the second of these sections, a provision should be added allowing deductions to be likewise accrued.

"Since the courts have held that income accrued by a decedent prior to his death is not income to the estate, it follows that unless such income is taxable to the decedent it will escape income tax altogether. For the same reason, unless expenses which accrued prior to death are allowed to the decedent, they cannot be used. The recommendation made by the subcommittee remedies these defects." [Preliminary report of a subcommittee of the Committee on Ways and Means, 73rd Congress, 2nd Session, p. 15.]

"Sections 42 and 43. Income accrued and accrued deductions of decedents: The courts have held that income accrued by a decedent on the cash basis prior to his death is not income to the estate, and under the present law, unless such income is taxable to the decedent, it escapes income tax altogether. By the same reasoning, expenses accrued prior to death cannot be deducted by the estate. Section 42 has been drawn to require the inclusion in the income of a decedent of all amounts accrued up to the date of his death regardless of the fact that he may have kept his books on a cash basis. Section 43 has also been changed so that expenses accrued prior to the death of the decedent may be deducted." [Report No. 704 of the Committee on Ways and Means, 73rd Congress, 2nd Session, p. 24. Substantially the same language is used in the Report of the Senate Finance Committee, Report 558, p. 28.]

APPENDIX B

Westinghouse Air Brake Mfg. Co. (Common)

Dividends of 25¢ per share declared on November 16, 1937, payable on April 30, 1938, July 30, 1938 and October 31, 1938, to stockholders of record on March 31, 1938, June 30, 1938 and September 30, 1938, respectively (Record, p. 6).

	November	Open	High	Low	Close	Chge.	
	12	27	29	26½	29	+1	
	13	28	28	28	28	—1	
	15	28¼	29	28	28	..	
D	16	27	27½	26⅞	27	—1	D
	17	26⅞	28	26⅞	27¼	+ ¼	
	18	27	27¾	26⅞	26⅞	— ⅜	
	19	27	27	25	25	—1⅞	
	20	25	26	24⅞	26	+1	

General Motors Corp. ($5 Preferred)

Dividend of $1.25 per share declared on February 7, 1938, payable on May 2, 1938, to stockholders of record on April 4, 1938 (Record, p. 6).

	February	Open	High	Low	Close	Chge.	
	1	115	115	114⅝	114⅝	— ⅜	
	2	114⅜	114⅜	113½	113½	—1⅛	
	3						No trading
	4	114	114	114	114	+ ½	
	5	113¾	114	113¾	114	0	
D	7						No trading.
	8	114	114	114	114	0	
	9	114	114	114	114	0	
	10	114	114	114	114	0	
	11	114	114⅛	113⅞	114⅛	+ ⅛	

D indicates date upon which dividend was declared.